

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
ALCAN ALUMINUM CORPORATION,)	
)	
)	
Defendant.)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil action pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§ 9607, 9613, for the recovery of costs incurred by EPA in response to the release or threat of release of hazardous substances at the Butler Mine Tunnel Superfund Site (the "Site"), located in Pittston Township, Luzerne County, Pennsylvania. The United States also seeks a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), establishing Defendant's liability for

any response costs that may be incurred by EPA in the future, that will be binding in any subsequent action by the United States against Defendant to recover such further response costs

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 9613(b).

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 9613(b), because the release or threatened release of hazardous substances that gives rise to these claims occurred in this District, and because the Site is located in this District.

4. Defendant Alcan Aluminum Corporation ("Alcan") is an Ohio corporation which, at all times relevant to this action, was engaged in the business of manufacturing aluminum products in Oswego, New York.

GENERAL ALLEGATIONS

5. The Site includes, but is not limited to, a network of underground mines and related caverns, pools, and waterways created by approximately 5 square miles of deep coal mine workings bordering the east bank of the Susquehanna River in Pittston, Pennsylvania.

6. The mine workings at the Site are drained by a 7500-foot tunnel variously known as the Butler Tunnel, Butler Mine Tunnel, Butler Water Tunnel, and Pittston Tunnel

("Butler Tunnel").

7. The Butler Tunnel discharges water from the mines directly into the Susquehanna River in Pittston, Pennsylvania.

8. The mine workings at the Site are accessible from the surface by numerous air shafts or boreholes located in the Pittston area.

9. One of these air shafts or boreholes, known as the Chapman Air Shaft ("the Borehole"), is located on the premises of Hi-Way Auto service, an automobile fuel and repair station situated above the Butler Tunnel. The Borehole leads directly into the mine workings of the Site.

10. During the period between approximately mid-1978 through late 1979, the owner of Hi-Way Auto Service permitted numerous liquid waste transport companies to dispose of hazardous substances into the Borehole.

11. During the period between approximately mid-1978 through late 1979, Defendant owned or possessed hazardous substances and arranged for the disposal of those hazardous substances. These hazardous substances were transported to and disposed of through the Borehole into the Site.

12. On or about September 27, 1985, approximately 100,000 gallons of water contaminated with hazardous substances were released from the Site into the Susquehanna River, creating a 50-mile long oily sheen on the river.

13. On or about September 28, 1985, EPA was notified by the Commonwealth of Pennsylvania of the release of hazardous substances from the Site.

14. Between September 1985 and January 1987, EPA conducted activities in response to the release and threatened release of hazardous substances at the Site including removal and disposal of contaminated debris and soil, air and water monitoring, and hydrogeologic studies, all pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

15. Analysis of samples from the Site, the Susquehanna River, and the Borehole, confirmed the presence of hazardous substances, as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including, but not limited to, cadmium, chromium, copper, lead, and zinc.

16. EPA listed the Site on the National Priorities List ("NPL") on July 1, 1987. The NPL is promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and can be found at 40 C.F.R. Part 300, Appendix B. the Site was placed on the Final NPL list.

17. In November, 1989, the United States brought an action pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a) in this Court against 20 defendants, including Alcan, to recover response costs totaling \$1,302,290, incurred in connection with the EPA response actions described in the foregoing paragraphs.

18. The United States subsequently entered into consent decrees with all defendants except Alcan.

19. The settling defendants in the aforementioned action agreed to pay \$828,500, i.e., a portion of EPA's total outstanding response costs, and to conduct further remedial actions.

20. On May 8, 1991, this Court granted the United States' motion for summary judgment against Alcan to recover the balance of the response costs.

21. The United States Court of Appeals for the Third Circuit thereafter affirmed the District Court's finding that the United States had established Alcan's liability. United States v. Alcan Aluminum Corp., 964 F.2d 252, 255, 257 (3rd Cir. 1992).

22. The Third Circuit vacated and remanded the judgment for the narrow purpose of granting Alcan the opportunity to limit its liability, by demonstrating the divisibility of its harm from the commingled mass of oily hazardous waste discharged at the Butler Tunnel Site. Id. at 271.

23. On remand, this Court granted the United States' motion for summary judgment, finding that Alcan had presented no evidence to demonstrate that the harm from its waste emulsion, when mixed with the commingled mass of oily hazardous waste discharged at the Site, was capable of

reasonable apportionment. United States v. Alcan Aluminum Corp., 892 F. Supp. 648 (M.D. Pa. 1995). The United States was granted a judgment for \$473,790, the remainder of the removal costs. Id. at 659.

24. Alcan appealed, and the Court of Appeals for the Third Circuit affirmed this Court's decision. United States v. Alcan Aluminum Corp., 96 F.3d 1434 (3rd Cir. 1996).

25. On July 15, 1996, EPA issued the Record of Decision ("ROD"). The remedy chosen and described in the ROD addresses the possibility of future discharges of hazardous substances from the Site. The remedy calls for, inter alia, the establishment of an Administrative Center to: a) monitor rainfall, b) monitor flow rate at the Butler Tunnel discharge location, c) measure water levels in monitoring boreholes, and d) collect water samples for chemical analysis in an attempt to predict future discharges. The Administrative Center would be responsible for, inter alia, notifying the EPA and PADEP of a potential discharge, and when a discharge occurs, to deploy booms to reduce the migration of hazardous substances associated with the discharge, and facilitate the removal of hazardous substances.

26. Since the judgment rendered in favor of the United States by this Court in 1995, EPA has incurred additional response costs in connection with the release and

threatened release at the Site. These costs were incurred in connection with searches for potentially responsible parties ("PRPs"), preparation of the ROD and proposed remedial plan, community relations activities, oversight of the RI/FS, and an Agency for Toxic Substances Disease Registry ("ATSDR") preliminary assessment.

CLAIM FOR RELIEF

27. The foregoing paragraphs are realleged and incorporated herein by reference.

28. This Court has found that the Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

29. This Court has found that the Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

30. This Court has found that the substances referenced in paragraph 15 above, and other substances contained in Defendant's waste emulsion transported to the Site, are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

31. This Court has found that Defendant's hazardous substances were "released" from the facility into the "environment" within the meaning of Sections 101(22) and 101(8) of CERCLA, 42 U.S.C. § 9601(22), (8).

32. This Court has found that Defendant is within

the classes of persons described in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Specifically, that Defendant by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances which they owned or possessed, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

33. During the time following this Court's 1995 judgment to the present, the United States has incurred additional costs authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, and as defined by Sections 101(23) and (25) of CERCLA, 42 U.S.C. § 9601(23),(25), conducting response actions as a result of the release or threatened release of hazardous substances from the Butler Tunnel Site.

34. The response actions for which the United States now seeks reimbursement were necessary and appropriate "response" actions as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

35. The response costs for which the United States now seeks reimbursement were incurred in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300, promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

36. The United States may incur additional response costs in connection with the Site until the ROD remedy is

implemented and all response costs are paid by responsible parties.

37. The Defendant is jointly and severally liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all response costs incurred by the United States as a result of the response actions taken at the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Enter a judgment holding Defendant jointly and severally liable for all unreimbursed costs incurred by the United States in response to the release and threat of release of hazardous substances at the Site;

B. Enter a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), establishing Defendant's liability for any response costs that may be incurred by EPA in the future, that will be binding in any subsequent action by the United States against Defendant to recover such further response costs;

C. Award Plaintiff its costs and disbursements in this action; and

D. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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